



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103



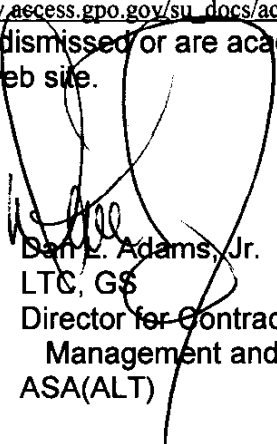
SAAL-PA

27 August 2001

MEMORANDUM FOR PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING

SUBJECT: 3Q2001 Quarterly Bid Protest Analysis Reports

The quarterly reports for GAO and interagency level protests for the period April 1 through June 30, 2001 (3Q01) is provided in accordance with AFARS 33.190. Additional information related to a GAO protest decision noted on the lessons learned portion of this report can be obtained on GAO's web site http://www.access.gpo.gov/su_docs/aces/aces170.shtml. GAO does not provide a decision on GAO protests that are dismissed or are academic. The interagency's level protest reports are not posted on a web site.


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LTC, GS
Director for Contracting/Information
Management and Assessment
ASA(ALT)

1. Number of protests filed:

	3Q01	2Q01	1Q01
TOTAL	43	63	64
o AMC	17	17	20
o USACE	7	17	19
o DA Other	19	29	25

Please refer to listing of protests by MACOM at end of this report.

2. Number of protests sustained/granted:

	3Q01	2Q01	1Q01
TOTAL	4	3	1
o AMC	0	0	0
o USACE	0	1	0
o DA Other	4	2	1

3. Costs:

a. Costs and fees awarded by GAO to protester:

	3Q01	2Q01	1Q01
TOTAL	\$712,000	\$4,597	\$4,157
o AMC	\$0	\$0	\$0
o USACE	\$0	\$4,597	\$0
o DA Other	\$712,000	\$0	\$4,157

(2) Postaward protests (contract cost/price):

	3Q01	2Q01	1Q01
TOTAL	\$4,371,942,196	\$208,076,434	\$221,736,448
o AMC	\$4,361,623,994	\$36,957,033	\$48,606,977
o USACE	\$1,625,076	\$27,649,817	\$61,545,901
o DA Other	\$8,693,126	\$143,469,584	\$111,583,570

c. Total government personnel costs resulting from protests:

	3Q01	2Q01	1Q01
TOTAL	\$1,108,116	\$183,178	\$256,355
o AMC	\$1,022,050	\$96,654	\$90,938
o USACE	\$14,862	\$33,987	\$126,164
o DA Other	\$71,240	\$52,537	\$39,253

4. Lessons Learned, Issues and Trends, Divergence from precedent:

a. AMC:

(1) United Defense LP, B-286925.3; B-286925.4; B-286925.5. Denied.

a) Tell the offerors what bothers you. Document the file.

One example in the UDLP case was not a dispute concerning the reliability mean time between failure base. The Government did not document its concern. It conveyed its concern orally and the record contained no written memorandum of the concern. Luckily, the protester wrote a letter to the Army complaining about the base and stated the Army's assumptions. The fact that the Protestor's letter stated the assumptions was very helpful to our case but we cannot rely on the protestor to document or analysis.

b) Publish everything in the solicitation or refer to a web site for full text.

For example, the SSAC conducted an independent evaluation that was not part of the regular evaluation process. The independent evaluation was mentioned in the solicitation so we were able to argue that any concerns about the fact that an independent evaluation would take place was untimely raised. Timing is everything in protest.

c) The Solicitation: No weird stuff unless it is program essential.

The heat of the RFP is in sections C, L and M. We get to custom draft these sections so we must therefore make sure that we keep discriminators and minimum requirements clear. We must have clear evaluation factors. Sometimes we become too complicate. It is a gift to be simple.

d) Protestor's Gold Mine --- Agency discussion questions.

Remember to explain why answers to discussion questions warrant a change in score. If the proposal wasn't good enough before, why is it good enough now? Sometimes only a higher score is given in the re-evaluation without a reason for the higher score. Explain changes in scores.

e) The most important document is the score selection decision document.

It must be contemporary with the decision. And it should include an awardee's warts and unsuccessful offeror's virtues. Otherwise, it appears to be a decision that did not really consider all factors in reaching a decision.

f) Write to your audience – Your audience includes the GAO/Federal Courts.

When a common term is used, make sure that it's meaning is defined. For example, what did "urgent" mean in the context of development of the program? Luckily, the solicitation defined the "urgent" concept as "extensive development" at 2 years. This provided the proper analysis for a proposal with development under 2 years as falling within the urgent requirement.

(2) Kottmann, Inc., B-287541.1; B-287541.2; and B-287541.3. Withdrawn.

a) Confirmation of receipt of RFQ. When CACW sends a request for quotation or other solicitation document to a vendor, we should routinely ask for an acknowledgement of receipt, by return message or otherwise. If we don't review anything within reasonable time we should contact the vendor.

b) Vendor opportunity to comment. Under FAR 15.306, adverse past performance information must be provided to the concerned vendor for comment. All such information should routinely be provided for comment even in acquisitions such as GSA Schedule purchases to which FAR Part 15 does not apply. If doubt exists that particular information is adverse, the doubt should be resolved in favor of providing the information for comment. Opportunity for comment should be provided also even if the contracting officer expects to disregard or discount the information.

c) Conflict of interest. When vendors are selected (for GSA Schedule acquisition) and again when quotations or offers are received, the contracting officer should routinely ask the requiring activity whether any vendor entity – quoter, offeror, teaming partner, subcontractor, or similar affiliate – has performed or is performing any work for the activity, and whether that work has any connection with the requirement which is the subject of the acquisition.

b. USACE: No significant information to report.

c. DA Others: No significant information to report.

(1) BAE Systems, B-287189.1 & .2.

On 14 May 2001, the GAO sustained a protest from BAE system, arising from an A-76 competition to provide Directorate of Logistics (DOL) services at the U.S. Army Garrison - Hawaii, which includes Ft. Shafter and Schofield Barracks. After the in-house offer was sealed, the Performance Work Statement (PWS) was

revise but the Independent Review Officer (IRO) was not notified of the revisions. The GAO found that the IRO failed to properly ensure that the in-house offer met the initial PWS or the revised PWS (specifically in the area of the personal property services). The GAO also found that the in-house offer failed to meet certain minimum experience requirement for key personnel contained in the PWS. Finally the GAO found the agency failed to determine whether an enhancement offered by BAE (servicing walk-in customer in the personal property services office within 15 minutes rather the 30 minutes required in the PWS) constituted a level of performance the in-house should have been required to meet. It is recommended that the PWS be revised to more clearly reflect the Army's requirement, that revised proposals be submitted by BAE and the in-house team, and that a new cost comparison be conducted.

Lessons Learned: The IRO must ensure that the MEO can perform the task in the PWS, and must maintain a verifiable record to that effect. Upon unsealing the MEO's Technical Performance Plan (TTP), the SSEB/SSA should determine whether the MEO complies with the PWS. If not, the SSEB/SSA have the authority to resolve the issue by requesting necessary adjustments to the MEO and TPP. Once the MEO and TPP are adjusted, comparison with the successful private-sector offer can commence. Importantly, in a best value competition, any strengths noted in a successful offeror's proposal cannot be discounted. Instead, the MEO and TPP must be analyzed to see if they offer the same level of quotation and performance, and if not they must be adjusted. This adjustment does not require that MEO mimic the successful offer in terms of manning or organization. Also, a MEO must meet any minimum mandatory experience requirements set forth in the RFP. The final lesson learned is that an AAB possesses the authority to review determinations made by a SSEB/SSA.

	3Q01	2Q01	1Q01
AMC TOTAL	16	18	20
ACLAL	0	0	0
ANDA	0	0	0
ARDEC	0	0	0
ARL	0	0	2
ATCOM	0	0	0
AMCOM	2	5	4
AMCOM (AATD)	0	0	0
BELVOIR	0	0	0
BGAD	0	0	0
CACWOO	2	0	0
CCAD	0	0	1
CBDCOM	0	0	0
CECOM	2	2	6
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	0	0	0
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
OSC	2	1	0
PBA	0	0	0
RMA	0	0	0
RRAD	1	0	0
SBCCOM	1	0	1
SSCOM	0	0	0
TACOM	0	8	3
TECOM	6	0	0
TECOM-OPTEC	0	0	0
TECOM-Dugway	0	0	0
TECOM-Yuma Proving Ground	0	0	0
USMA	1	2	2
VHFS	0	0	0
WSMR	0	0	0
WVA	0	0	0
YPG	0	0	0

GAO PROTESTS FILED BY MAJOR COMMANDS (HCAs)

	3Q01	2Q01	1Q01
USACE TOTAL	7	17	19
U.S. Army Engineer District			
Alaska	0	0	0
Baltimore	0	0	0
Buffalo	0	0	0
Charleston	1	0	0
Chicago	0	0	0
Detroit	0	0	0
Europe	0	1	1
Fort Worth	0	0	0
Galveston	0	1	0
Headquarters	0	1	1
Humphreys Eng. Center	0	0	0
Huntington	0	0	0
Huntsville	1	1	4
Jacksonville	0	0	0
Japan	0	2	0
Kansas City	0	1	0
Little Rock	1	0	0
Los Angeles	1	0	0
Louisville	1	1	1
Memphis	0	2	1
Mobile	1	3	3
Nashville	0	0	0
New England	0	0	0
New York	0	1	0
New Orleans	0	0	2
Norfolk	0	0	0
Omaha	0	1	0
Pacific Ocean Division	0	0	0
Philadelphia	0	0	3
Pittsburgh	0	0	1
Portland	0	0	0
Rock Island	0	0	0
Sacramento	0	0	0
Savannah	0	2	1
Seattle	0	0	0
St. Louis	1	0	1
St. Paul	0	0	0
Transatlantic	0	0	0
Transatlantic (Europe)	0	0	0
Tulsa	0	0	0

HQ Military Traffic Mgmt Cmd	3	4	0
Mil District of Wash	0	0	0
MEDCOM	3	6	6
National Guard Bureau	2	3	0
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	0
USA Force Command	3	4	5
USA Information Sys Cmd	0	0	2
USA Intel & Security Cmd	0	1	0
USA Medical Res. & Mat Cmd	0	0	0
USA Pacific	0	3	1
USA South	0	3	0
USASDC	0	0	0
USA Space & Missel Def Cmd	1	0	0
USA TRADOC	5	2	6
8th USA - Korea	1	0	0
USSOC	0	0	0
USACFSC	0	0	0
USAREUR	0	0	2

**QUARTERLY REPORT FOR ~~AGENCY LEVEL~~ PROTESTS
FOR THE PERIOD APRIL 1 THROUGH JUNE 30, 2001 (3Q01)**

5. Number of protest filed:

	3Q01	2Q01	1Q01
TOTAL	30	22	24
o AMC	12	5	8
o USACE	15	15	6
o DA Other	3	2	10

Please refer to listing of protests by MACOM at end of this report.

6. Number of protest sustained/granted:

	3Q01	2Q01	1Q01
TOTAL	0	0	3
o AMC	0	0	2
o USACE	0	0	0
o DA Other	0	0	1

7. Costs:

a. Costs and fees awarded to protester:

	3Q01	2Q01	1Q01
TOTAL	\$0	\$0	\$4,827
o AMC	\$0	\$0	\$0
o USACE	\$0	\$0	\$0
o DA Other	\$0	\$0	\$4,827

TOTAL	\$165,981,608	\$34,828,433	\$773,322,809
o AMC	\$144,010,068	\$14,247,367	\$690,121,580
o USACE	\$19,648,231	\$20,577,188	\$6,205,767
o DA Other	\$2,323,309	\$2,868	\$767,995,432

c. Total government personnel costs resulting from protests:

	3Q01	2Q01	1Q01
TOTAL	\$49,566	\$64,471	\$44,610
o AMC	\$37,921	\$36,698	\$33,472
o USACE	\$9,614	\$25,973	\$4,505
o DA Other	\$2,031	\$1,800	\$6,633

8. Lesson learn, Issues, and Trends, Divergence from precedent: :

a. AMC: No significant information to report.

b. USACE: No significant information to report.

c. Other DA: No significant information to report.

	3Q01	2Q01	1Q01
AMC TOTAL	12	5	8
ACLAL	0	0	0
ANDA	0	0	0
ARDEC	0	0	0
ARL	0	0	0
ATCOM	0	0	0
AMCOM	6	1	1
AMCOM (AATD)	0	0	0
BGAD	0	0	0
CACWOO	0	0	0
CCAD	0	0	0
CBDCOM	0	0	0
CECOM	1	1	3
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	0	0	1
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
PBA	0	0	0
RMA	0	0	0
RRAD	0	0	0
SBCCOM	1	0	0
SSCOM	0	0	0
PM SANG - Saudi	0	0	0
TACOM	0	3	4
TECOM	3	0	0
USMA	0	0	0
WSMR	0	0	0
WVA	0	0	0
YPG	0	0	0
OSC	0	0	0

AGENCY LEVEL PROTEST FILED BY MAJOR COMMANDS (HCAs)

	3Q01	2Q01	1Q01
USACE TOTAL	15	22	6
U.S. Army Engineer District			
Alaska	0	0	0
Baltimore	2	6	1
Buffalo	0	0	0
Charleston	0	0	0
Chicago	2	0	2
Detroit	0	0	0
Europe	0	1	0
Fort Worth	0	0	0
Galveston	0	0	0
Headquarters	0	1	1
Humphreys Eng. Center	0	1	0
Huntington	0	0	0
Huntsville	0	0	0
Jacksonville	0	0	0
Japan	0	0	0
Kansas City	0	1	0
Little Rock	0	0	0
Los Angeles	1	0	0
Louisville	2	1	1
Memphis	0	1	0
Mobile	0	1	0
Nashville	0	0	0
New England	0	0	0
New York	3	1	0
New Orleans	1	0	0
Norfolk	2	1	1
Omaha	0	1	0
Pacific Ocean Division	0	0	0
Philadelphia	0	1	0
Pittsburgh	0	0	1
Portland	0	1	0
Rock Island	0	0	0
Sacramento	0	1	0
Savannah	0	2	0
Seattle	1	1	0
St. Louis	0	0	0
St. Paul	0	0	0
Transatlantic	0	1	0
Transatlantic (Europe)	0	0	0
Tulsa	1	0	0
Vicksburg	0	0	0

	3Q01	2Q01	1Q01
DA OTHER TOTAL	3	2	10
Defense Supply Service - Wash	0	1	0
HQ Military Traffic Mgmt Cmd	0	0	0
Mil District of Wash	0	0	0
MEDCOM	0	0	0
National Guard Bureau	0	0	3
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	0
USA Force Command	0	0	0
USA Information Sys Cmd	0	0	0
USA Intel & Security Cmd	0	0	0
USA Medical Res. & Mat Cmd	0	0	0
USA Pacific	0	0	0
USA South	0	0	0
USASDC	0	0	0
USA Space & Missel Def Cmd	0	0	0
USA TRADOC	0	0	0
8th USA - Korea	3	1	7
USSOC	0	0	0
USACFSC	0	0	0